

*United States Court of Appeals
for the Second Circuit*



**SUPPLEMENTAL
BRIEF**

76-2099

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

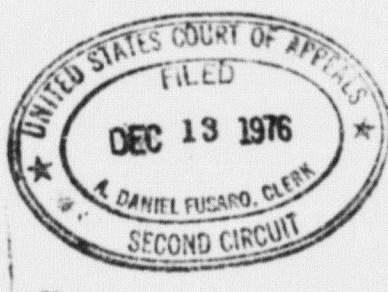
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LEONARD SHELTON,
Petitioner-Appellant,
-against-
LARRY TAYLOR, Warden, Metro-
politan Correctional Center, and
MAURICE SIGLER, Chairman,
United States Board of Parole,
Respondents-Appellees.
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Docket No. 76-2099

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SUPPLEMENTARY BRIEF FOR APPELLANT

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



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Appellant claimed in the district court that the unresolved federal parole violation detainer prejudiced his ability to participate in education rehabilitation programs offered at the Leesburg State Prison. Proof of the very substantial adverse effect of the detainer was offered by appellant in a notice by the Supervisor of the prison education department (T to appellant's separate appendix).

In Moody v. Daggett, 45 U.S.L.W. 4217, 4020, n.9, the Supreme Court said that where rehabilitation and institution programs are not protected by due process, there is no liberty interest in them and thus the presence of the detainer would not produce a grievous loss. See also Meachum v. Fano, 96 Sup. Ct. 2532 (1976). The statement in Moody has no applicability in this case, however, for it is clear that in New Jersey decisions of prison authorities can be reviewed for violations of constitutional rights, and discretionary decisions involving prison classification, privileges, etc., can be reviewed on the ground that they are arbitrary and capricious. Such judicial review can be conducted by the Appellate Division of the Superior Court. Rules Governing the Courts of New Jersey: Rules Governing Appellate Practice, §2:2-3(a)(2);* State v. Clark, 54 N.J. 25, 252 A.2d 720 (1969). Thus, where a claim is made by a prisoner concerning his prison status or classification, the court will examine the facts to

* 2:2-3. Appeals to the Appellate Division from Final Judgments, Decisions, Actions and from Rules

(a) As of Right. Except as otherwise provided by R. 2:2-1(a)(3) (final judgments applicable directly to the Supreme Court), appeals may be taken to the Appellate Division as of right ... (2) to review final decisions or actions of any state administrative agency or officer except those governed by R. 4:74-8 (Wage Collection Section Appeals), or to review the validity of any rule promulgated by such agency or officer.

assure that the decision is not arbitrary or capricious. State v. Bydzewski, 112 N.J. Super. 517, 271 A.2d 907 (A.D. 1970); McBride v. McCorkle, 44 N.J. Super. 468, 130 A.2d 881, 885 (A.D. 1957).

In this case, had the detainer not been present, appellant would have been able to challenge as arbitrary and capricious a refusal by prison authorities to permit him to participate in an education release program. Furthermore, it is likely that any such refusal would be found arbitrary, after the notice that he was eligible and in light of his excellent prison record. In any event, under New Jersey law, his interest is a protected one. Accordingly, appellant was prejudiced by the delayed hearing, and the writ should issue.

CONCLUSION

For the foregoing reasons and the reasons argued in the main brief for appellant, the writ should issue.

Respectfully submitted,

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